

FIRST AMENDMENT TO LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT

By and among

CITY OF SAN JOSE FINANCING AUTHORITY

and

CITY OF SAN JOSÉ

and

BANK OF AMERICA, N.A.

dated as of May 1, 2011

relating to

\$67,195,000
City of San José Financing Authority
Taxable Lease Revenue Bonds Series 2008F
(Land Acquisition Refunding Project)

**FIRST AMENDMENT TO LETTER OF CREDIT AND
REIMBURSEMENT AGREEMENT**

This FIRST AMENDMENT TO LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT, dated as of May 1, 2011 and effective on May 2, 2011 (this "First Amendment"), by and among the CITY OF SAN JOSE FINANCING AUTHORITY, a joint exercise of powers authority organized and existing under and by virtue of the laws of the State of California (the "Authority"), the CITY OF SAN JOSE, a municipal corporation and chartered city duly organized and existing by virtue of the Constitution and laws of the State of California (the "City") and BANK OF AMERICA, N.A., a national banking association (the "Bank").

WITNESSETH

WHEREAS, the Authority, a joint exercise of powers authority duly organized and existing under and pursuant to that certain Joint Exercise of Powers Agreement, dated December 8, 1992, by and between the City and the Redevelopment Agency of the City of San José is authorized to borrow money for the purpose, among other things, of financing and refinancing public capital improvements for the City; and

WHEREAS, the Authority has previously issued its \$67,195,000 City of San José Financing Authority Taxable Lease Revenue Bonds, Series 2008F (Land Acquisition Refunding Project) (the "Bonds"); and

WHEREAS, the Bank issued its Irrevocable Letter of Credit No. 3093418 (the "Letter of Credit") in connection with the Bonds pursuant to the terms and conditions of that certain Letter of Credit and Reimbursement Agreement, dated as of June 1, 2008 (the "Reimbursement Agreement"), by and among the Authority, the City and the Bank; and

WHEREAS, the Authority, the City and the Bank desire to enter into this First Amendment to the Reimbursement Agreement in connection with and as consideration for the delivery by the Bank of an extension of the Letter of Credit to May 2, 2014;

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

AMENDMENTS

SECTION 1.01. Amendment to Section 1.01 of Reimbursement Agreement. Section 1.01 of the Reimbursement Agreement is hereby amended and restated with respect to the following definitions:

“Amortization Period” means, with respect to any Principal Purchase Drawing, the period commencing on the date of such Principal Purchase Drawing and ending on the earlier of (a) the third anniversary of such Principal Purchase Drawing, (b) the third anniversary of the Expiration Date (as in effect on the first day of such Principal Purchase Drawing), (c) the date an Alternate Credit Facility is accepted by the Trustee and (d) the date the Stated Amount of the Letter of Credit is permanently reduced to zero or the Letter of Credit is otherwise terminated in accordance with its terms prior to its stated Expiration Date, including on the occurrence of an Event of Default as provided herein.

“Bank Rate” means with respect to Principal Purchase Drawings, (1) the Base Rate for the first 90 days following the Principal Purchase Drawing and (2) the Base Rate plus one percent (1.0%) per annum for the 91st day and thereafter, computed on the basis of the actual number of days elapsed and a 365/366-day year, as applicable; provided, that the Bank Rate for any day shall not exceed the maximum rate permitted by law; provided, further, however, that if the amount of interest payable for any interest computation period at the Bank Rate determined as set forth above, exceeds the maximum amount of interest permitted by applicable law (which shall be computed and based on the maximum rate permitted under applicable law for each day during such interest period), the amount payable for such interest computation period shall be automatically reduced to such maximum permissible amount. If the amount of interest payable for any interest period is reduced pursuant to the preceding sentence, then (i) if the amount of interest payable for any subsequent interest period would be less than the maximum amount permitted by applicable law, the amount of interest payable for such subsequent interest period shall be automatically increased to the lesser of (A) such maximum permissible amount and (B) the amount that would provide for recovery of earlier reductions in interest paid pursuant to the preceding sentence and not previously the subject of increased or additional interest paid pursuant to this sentence and (ii) if there is a change in law such that additional interest may be paid in respect of an earlier interest period which has theretofore been the subject of a reduction pursuant to the preceding sentence, such additional interest up to the amount of such reduction not previously the subject of increased or additional interest paid pursuant to this sentence shall, within five Business Days after the occurrence of such change in law, be paid in respect of such earlier interest period. Each amount of increase in interest paid pursuant to clause (i) or additional interest paid pursuant to clause (ii) shall be applied against earlier reductions in interest made pursuant to the second sentence of this definition, in the order of occurrence of such reductions.

“Base Rate” means, for any day, a fluctuating rate per annum equal to the highest of (a) the Prime Rate plus one and one-half percent (1.5%), (b) the Federal Funds Rate plus three percent (3.0%) and (c) seven and one-half percent (7.5%).

“Default Rate” means, for any day, a fluctuating rate per annum equal to the Base Rate plus three percent (3.0%).

“Fee Letter Agreement” means the Fee Letter Agreement, dated May 2, 2011, by and between the Bank and the City.”

“Term-Out Rent” means for any rental period during the Amortization Period an amount equal to the sum of (i)(a) the quotient obtained by dividing the aggregate principal amount of all Bank Bonds that are Outstanding on the first day of the Amortization Period by three (3) and (b) the interest to accrue on the amount determined in accordance with clause (a) above during such rental period, assuming a per annum interest rate equal to the Maximum Bank Interest Rate (based on a 365-day year and actual days elapsed), plus (ii) the principal and interest due with respect to all Bonds that are not Bank Bonds.”

SECTION 1.02. Amendment to Section 2.06 of Reimbursement Agreement. Section 2.06 of the Reimbursement Agreement is hereby amended and restated in its entirety as follows:

“The City agrees to pay fees to the Bank in accordance with the terms of the Fee Letter Agreement. The fee provisions set forth in the Fee Letter Agreement are incorporated herein by reference thereto as if fully set forth herein.”

ARTICLE II

MISCELLANEOUS

SECTION 2.01. Severability. Any provision of this First Amendment which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

SECTION 2.02. Governing Law. This First Amendment shall be governed and construed in accordance with the laws of the State of New York in so far as it is enforceable against the Bank and the laws of the State of California in so far as it is enforceable against the City and the Authority and applicable federal law without regard to choice of law rules.

SECTION 2.03. Headings. Section headings in this First Amendment are included herein for convenience of reference only and shall not constitute a part of this First Amendment for any other purpose.

SECTION 2.04. Execution in Counterparts. It shall not be necessary that all parties execute and deliver the same counterpart of this First Amendment. This First Amendment shall therefore become effective when each party has executed any counterpart hereof and delivered the same to the other parties. All such counterparts, collectively, shall be deemed a single agreement.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be duly executed and delivered and effective by their respective officers thereunto duly authorized as of the date first above written.

CITY OF SAN JOSE

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

DANIELLE KENEALEY
Chief Deputy City Attorney

CITY OF SAN JOSE FINANCING
AUTHORITY

By: _____
Name: _____
Title: _____

[Signature page to First Amendment to Letter of Credit and Reimbursement Agreement.]

BANK OF AMERICA, N.A.

By: _____

Name: _____

Title: _____